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Supreme Court of the United States.

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
OCT 26 1903
JAMES H. McKENNEY,
Clerk.

Nos. 44 and 45.

HOWARD ET AL. *vs.* FLEMING, ETC.,

AND

HOWARD ET AL. *vs.* NORTH CAROLINA.

Motion of Appellants and Plaintiffs in Error.

Come now appellants and plaintiffs in error, by their counsel, Frank P. Blair and Leslie A. Gilmore, and move the court for an order committing them to the custody of the marshal of this court, and that they be enlarged therefrom pending the further disposition of their said causes in this court upon the giving of a reasonable bail, and urge in support of this motion the affidavit of Leslie A. Gilmore annexed hereto and the records and briefs filed herein.

FRANK P. BLAIR,
LESLIE A. GILMORE,
Attorneys for Appellants and Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1903.

Nos. 44 and 45.

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vs.
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and

HOWARD ET AL.
vs.
NORTH CAROLINA.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Leslie A. Gilmore, of lawful age, being first duly sworn, deposes and says that he is of counsel for said appellants and plaintiffs in error, and in their behalf makes this affidavit.

Deponent further says that said H. D. Hawley is in the custody of said J. M. Fleming, at Raleigh, and said J. L. Howard is in custody of C. N. Christian, an official under said Fleming, at Tillery, in said State.

That said Hawley and Howard have been wrongfully deprived of liberty by the authorities of North Carolina since March 23, 1901.

That motion under rule 34 for bail pending appeal of the *habeas corpus* proceedings herein was made to the United States circuit court, which granted the writ, and which motion was opposed by Special Attorney General Thomas B. Womack and the governor of North Carolina, with the suggestion that the said United States circuit court had no

authority to enter such order, and that "appellants would not be liberated if bond was given," and the motion, without being denied by the court, was held up to await the sanction of the said governor to an order for bail.

Affiant further says that the prejudice in said State against said appellants is very strong, and that unless the marshal of this court takes custody of said appellants, H. D. Hawley and J. L. Howard, pending the further determination of their said causes in this court, and have them before this court when decision thereof is rendered, that the order of this court, should it be made for their discharge, will be defeated by the infliction of other wrongs and oppressions upon them by the authorities or by a mob of North Carolina.

Affiant further says that said appellants and plaintiffs in error can give a reasonable bail for their appearance.

LESLIE A. GILMORE.

Subscribed and sworn to before me this 26th day of October, 1903.

JAS. H. MCKENNEY,

[SEAL.] *Clerk of United States Supreme Court.*